

## NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1995, each agency shall begin the rulemaking process by first filing a Notice of Proposed Rulemaking, containing the preamble and the full text of the rules, with the Secretary of State's Office. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the Arizona Administrative Register.

Under the Administrative Procedure Act (A.R.S. § 41-1001 *et seq.*), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for adoption, amendment, or repeal of any rule. A.R.S. §§ 41-1013 and 41-1022.

### NOTICE OF PROPOSED RULEMAKING

#### TITLE 4. PROFESSIONS AND OCCUPATIONS

#### CHAPTER 45. BOARD OF RESPIRATORY CARE EXAMINERS

##### PREAMBLE

1. Sections affected:

Article 1  
R4-45-101  
R4-45-102  
R4-45-103  
R4-45-104  
Article 2  
R4-45-201  
R4-45-202  
R4-45-203  
R4-45-204  
R4-45-205  
R4-45-206  
R4-45-207  
R4-45-208  
R4-45-209  
R4-45-210  
R4-45-211  
R4-45-212  
R4-45-213  
R4-45-214  
Article 3  
R4-45-301  
R4-45-302

Rulemaking Action:

New Article  
New Section  
New Section  
New Section  
New Section  
New Article  
New Section  
New Section  
New Section  
New Section  
New Section  
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New Article  
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New Section

2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. § 32-3504(2) "the Board shall adopt rules necessary to administer this Chapter."

Implementing statutes: A.R.S. §§ 32-3501 through 32-3558, the laws regarding the Board of Respiratory Care Examiners.

3. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Mary Hauf Martin, Executive Director

Address: Board of Respiratory Care Examiners  
1400 West Washington, Suite 200  
Phoenix, Arizona 85007

Telephone: (602) 542-5995

Fax: (602) 542-5900

4. An explanation of the rule, including the agency's reasons for initiating the rule:

The Board is mandated by statute to adopt rules which will provide licensees, applicants, and the general public the requirements for licensure of respiratory care practitioners in Arizona.

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5. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:  
Not applicable.
6. The preliminary summary of the economic, small business, and consumer impact:  
The proposed rules provide the framework for licensure of respiratory care practitioners (RCP) in Arizona. There are small fee increases for some aspects of licensure, while others remain the same as in current practice. All fees are born by individual RCPs so there is no small business impact. All revenues derived from fees enable the Board to continue to cover costs of operation. Consumers are served by the Board whose purpose is to protect the public health.
7. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:  
Name: Mary Hauf Martin, Executive Director  
Address: Board of Respiratory Care Examiners  
1400 West Washington, Suite 200  
Phoenix, Arizona 85007  
Telephone: (602) 542-5995  
Fax: (602) 542-5900
8. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:  
The Board will accept written comments until June 27, 1996.  
Date: June 27, 1996  
Time: 10 a.m.  
Location: Board of Respiratory Care Examiners  
1400 West Washington  
Second Floor Conference Room  
Phoenix, Arizona  
Nature: This is a regular, monthly public meeting of the Board of Respiratory Care Examiners.
9. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:  
None.
10. Incorporations by reference and their location in the rules:  
*Essentials and Guidelines of an Accredited Education Program for the Respiratory Therapy Technician and Respiratory Therapist*  
R4-45-203
11. The full text of the rules follows:

**TITLE 4. PROFESSIONS AND OCCUPATIONS**

**CHAPTER 45. BOARD OF RESPIRATORY CARE EXAMINERS**

**ARTICLE 1. GENERAL PROVISIONS**

<u>Section</u>	
<u>R4-45-101.</u>	<u>Definitions</u>
<u>R4-45-102.</u>	<u>Fees</u>
<u>R4-45-103.</u>	<u>Service by the Board</u>
<u>R4-45-104.</u>	<u>Change of Name or Address</u>

<u>R4-45-210.</u>	<u>Approved Continuing Education Programs</u>
<u>R4-45-211.</u>	<u>Criteria for Continuing Education Courses and Programs</u>
<u>R4-45-212.</u>	<u>Audit and Sanctions for Noncompliance</u>
<u>R4-45-213.</u>	<u>Waiver of Requirements</u>
<u>R4-45-214.</u>	<u>Temporary Licensure</u>

**ARTICLE 2. LICENSURE**

<u>Section</u>	
<u>R4-45-201.</u>	<u>Application</u>
<u>R4-45-202.</u>	<u>Standards of Professional Conduct</u>
<u>R4-45-203.</u>	<u>Minimum Standards Curriculum</u>
<u>R4-45-204.</u>	<u>Examinations</u>
<u>R4-45-205.</u>	<u>Application Based on Foreign Training</u>
<u>R4-45-206.</u>	<u>Application Based on Licensure by Another State</u>
<u>R4-45-207.</u>	<u>Licensure Based on Organizational Registration or Certification</u>
<u>R4-45-208.</u>	<u>Renewal</u>
<u>R4-45-209.</u>	<u>Continuing Education Requirements</u>

**ARTICLE 3. HEARINGS**

<u>Section</u>	
<u>R4-45-301.</u>	<u>Hearing Procedures</u>
<u>R4-45-302.</u>	<u>Rehearing or Review of Decision</u>

**ARTICLE 1. GENERAL PROVISIONS**

- R4-45-101. Definitions**  
The following definitions shall apply to the rules of the Board of Respiratory Care Examiners unless the context otherwise requires:
1. "ACLS" means Advanced Cardiac Life Support Protocols.

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2. "Applicant" means a person who has applied for licensure pursuant to A.R.S. § 32-3522.
3. "Approved Continuing Education Units" or "Approved CEUs" means a planned offering that has been approved by either the Board, American Association for Respiratory Care, or the Arizona Society for Respiratory Care.
4. "BLS" means Basic Life Support Protocols.
5. "Board" means the Board of Respiratory Care Examiners.
6. "CPR" means cardiopulmonary resuscitation.
7. "Continuing Education Units" or "CEUs" means planned offerings designed to enhance learning and promote the continued development of knowledge, skills, and attitudes consistent with contemporary standards for the individual's respiratory care practice.
8. "Direct supervision" means that the licensed respiratory care practitioner or physician is physically present at the work site readily available to provide respiratory care to a patient or observe and direct the practice by the holder of a temporary license.
9. "Executive Director" means the executive officer employed by the Board of Respiratory Care Examiners to perform administrative and investigative functions as ordered by the Board.
10. "License" means the actual document issued by the Board that allows a person to engage in the practice of respiratory care in the state of Arizona.
11. "Licensee" means a person who holds a biennial license issued pursuant to A.R.S. § 32-3501 et seq.
12. "National Board for Respiratory Care, Inc. (NBRC)" means the national credentialing board for respiratory therapy.
13. "Other places" as defined in A.R.S. § 32-3501(5) to include but not be limited to aerosolized medication, medications given through artificial airways, and medications given through vascular access.
14. "PALS" means Pediatric Advance Life Support Protocols.
15. "Respiratory Care Practitioner Licensure Applicant" means a person who holds a Temporary License pursuant to A.R.S. § 32-3521(A).
16. "State-administered examination" means the examination provided to individuals who apply for a license pursuant to A.R.S. § 32-3523(2). The state-administered examination will be provided to the Board of Respiratory Care by contract with the NBRC.
17. "Temporary License" means the actual document issued that allows an applicant to perform respiratory care services without a license as a Respiratory Care Practitioner Licensure Applicant under the direct supervision of a licensed respiratory care practitioner or a physician for a period of time not to exceed 1 year pursuant to A.R.S. § 32-3521.
18. "Under the direct supervision of a licensed respiratory care practitioner or a physician" means that the holder of a temporary license may perform respiratory care services under the direct supervision of a licensed respiratory care practitioner or a physician licensed pursuant to A.R.S. Title 32, Chapter 13 or 17.
19. "Verification of License" means the form the Board provides to an applicant to submit for completion to a state or states in which the applicant previously held a license prior to Board approval for an Arizona license.

**R4-45-102. Fees**

- A.** The Board shall charge the following fees:
1. \$100 for an application for a license.

2. \$150 for an application based on a diploma from a foreign respiratory therapy school.
3. \$85 for the initial license.
4. \$85 for the biennial renewal of a license for a respiratory care practitioner.
5. \$25 for an extension to a temporary license.
6. \$10 for a license verification.
7. \$10 for a duplicate license or duplicate wallet license card.
8. \$25 to purchase the Board's Respiratory Care Practitioners' List pursuant to A.R.S. § 32-3504(A)(7).
9. \$25 penalty for insufficient funds on a payment of any fee paid to the Board.

- B.** All fees shall be remitted to the Board by personal check, cashiers check, or money order, payable to the Board of Respiratory Care Examiners. All fees submitted to the Board will be non-refundable.

**R4-45-103. Service by the Board**

Service may be made by, for, on behalf of the Board of any decision, order, subpoena, notice, or other process by personal service or by mailing a copy by certified mail. Service by certified mail shall be made to the latest address of record on file with the Board. Service upon an attorney who has appeared on behalf of a party constitutes service upon the party. If service is certified by mail, service is complete upon deposit in the United States Mail.

**R4-45-104. Change of Name or Address**

- A.** A licensee shall notify the Board in writing within 30 calendar days when his or her name has been legally changed. A notarized or certified copy of the official document evidencing the name change shall be included. At the time of notification, the licensee shall pay the fee prescribed in R4-45-102(A)(G).
- B.** A licensee shall notify the Board within 10 calendar days after a change in his or her address of record.

**ARTICLE 2. LICENSURE**

**R4-45-201. Application**

- A.** An application for a license to practice as a respiratory care practitioner shall be submitted to the Board of Respiratory Care Examiners office on a form prescribed by the Board.
- B.** An application shall include an address of record and shall be typed or written in black ink, shall be signed by the applicant, and shall be accompanied by the following: an application fee, in the amount prescribed in R4-45-101(A)(1), all documentation needed to verify information provided on the application and a statement under oath of the facts entitling the applicant to take an examination or to receive a license without examination.
- C.** The applicant shall inform the Board of any changes in the applicant's address of record within 10 days from the date of change.
- D.** An applicant shall be given notice of any Board decision concerning the application.
- E.** If the Board denies the application, the applicant may make a written request for a hearing to review the results of the application. Such request shall be filed with the Board within 15 days following service of notice of the denial and shall state specifically the reasons the Board should reconsider its decision denying the application.
- F.** An applicant for a license must be a high school graduate or have obtained a General Equivalency Diploma (G.E.D.).

**R4-45-202. Standards of Professional Conduct**

Conduct or practice which is contrary to recognized standards of ethics of the respiratory therapy profession includes, but is not limited to:

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ited to the following:

1. Engaging in the practice of respiratory care in a manner that harms or may harm a patient or that the Board determines falls below the community standard;
2. Procuring or attempting to procure a license or renewal of a license to practice respiratory care by fraud or misrepresentation;
3. Violating a formal order, a condition of probation, or a stipulation issued by the Board;
4. Obtaining a fee by fraud, deceit, or misrepresentation;
5. Falsely claiming attendance at a continuing education program to meet license renewal requirements;
6. Any conduct or practice that endangers a patient's or the public's physical or emotional health and safety or may reasonably be expected to do so.
7. Sexual intimacies with a patient in a clinical setting;
8. Committing any act of sexual abuse, misconduct, harassment, or exploitation;
9. Conduct that the Board determines, based on community standards, constitutes incompetence, gross negligence, repeated negligence, or negligence that results in harm or death of a patient;
10. Abandoning or neglecting a patient or leaving a respiratory therapy assignment before properly advising appropriate personnel.
11. Use of or being under the influence of alcohol, illegal drugs or substances, or drugs or substances which impair judgment, while on duty in any health care work location;
12. Impersonating another licensed practitioner;
13. Knowingly employing, directing, or supervising a person in the performance of respiratory care who is not authorized to practice respiratory care;
14. Violating the confidentiality of information concerning a patient;
15. Inaccurately recording, falsifying, or altering patient records, including, but not limited to, patient charts or medication administration records;
16. Misrepresenting or omitting facts on an application for employment as a respiratory care practitioner;
17. Retaliating against any person who reported in good faith to the Board alleged incompetence or illegal or unethical conduct of any practitioner.

**R4-45-203. Minimum Standards Curriculum**

The minimum standards of training programs for respiratory therapists or respiratory technicians shall consist of a curriculum relating to the requirements of the *Essentials and Guidelines of an Accredited Education Program for the Respiratory Therapy Technician and Respiratory Therapist* adopted in 1962 (revised in 1986), the most recent version, by the Joint Review Committee for Respiratory Therapy Education of the Commission on Accreditation of Allied Health Education Programs (CAAHEP).

**R4-45-204. Examinations**

- A. Except when a license may be issued without an examination pursuant to A.R.S. § 32-3524, an applicant for a licensee shall pass a written examination for Certified Respiratory Therapy Technicians offered by the NBRC.
- B. When the NBRC administers the examination to the applicant, the applicant shall forward a copy of either the results or certificate to the Board, or direct the NBRC to do so, indicating the applicant passed the examination, as soon as possible.

**R4-45-205. Application Based on Foreign Training**

If an applicant for a license is based on a diploma from a foreign respiratory therapy school, the applicant shall cause the institution from which the diploma was issued to deliver to the Board certified

copies of course transcripts and all other information concerning the applicant's course of study sufficient to enable the Board to determine whether the course of study is equivalent to the Board's minimum standards.

**R4-45-206. Applicant Based on Licensure by Another State**

- A. If an application for a license is based on licensure by another state, the applicant shall cause the state or states which issued the license to deliver to the Board certified copies of such license as well as a Verification of License regarding the status of applicant's license in that state prior to Board approval of the applicant's license. The course of study in another state must be equivalent to this state in the opinion of the Board.
- B. The applicant shall cause the state in which he or she is licensed to deliver to the Board a copy of either the results of the NBRC examination or a copy of any other examination administered to the applicant, and the results of that examination, and any other information necessary to enable the Board to determine whether such examination is equivalent to that which the Board administers.

**R4-45-207. Licensure Based on Organizational Registration or Certification**

The Board may issue a licensure to an applicant without examination if the applicant files an application for licensure, satisfies the requirements prescribed in A.R.S. § 32-3523, and is registered as a respiratory therapist or certified as a respiratory therapist technician by the NBRC.

**R4-45-208. Renewal**

- A. A respiratory care practitioner license shall expire every other year on the licensee's birthday. To renew a license, an individual shall:
  1. Pay the renewal licensing fee, and
  2. Complete the required continuing education units for the previous licensing period.
- B. If an expired license is not renewed before 2 years from the date of expiration, the individual must reapply as a new applicant; or
- C. The Board shall notify licensees of expiration of a license by mail at the address on file.
- D. Misrepresentation of information on the renewal application or of compliance in acquiring continuing education units shall constitute grounds for disciplinary action.

**R4-45-209. Continuing Education Requirements**

Continuing education is required as a condition of licensure renewal.

1. A respiratory care practitioner shall complete 20 hours of approved education every 2 years. To renew a license, a respiratory care practitioner shall report compliance with the continuing education requirements. Supporting documentation, showing evidence of compliance, shall be submitted only if requested by the Board.
2. During the 1st licensure period, the licensee shall use the date of application for licensure as the beginning period in which the licensee is entitled to acquire continuing education credits. Subsequent continuing education periods shall be between the licensee's birthdate every 2 years coinciding with subsequent licensure periods.

**R4-45-210. Approved Continuing Education Programs**

- A. The Board shall accept for continuing education credit a course or program meeting the criteria set forth in R4-45-211. The Board shall have the authority to audit programs offering continuing education for compliance with the criteria.
- B. Any course or program approved by the American Association for Respiratory Care or the Arizona Society for Respiratory

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Care shall be accepted by the Board for continuing education credit.

**R4-45-211. Continuing Education Course and Program Criteria**

- A.** Courses and programs shall meet the following criteria:
1. The content of the course or program shall be relevant to the scope of practice of respiratory care as defined in A.R.S. § 32-3501(5); and
  2. At least 2/3 of the course or program hours shall be related to clinical practice
- B.** The remaining up to 1/3 non-clinical continuing education hours may cover:
1. Activities relevant to specialized aspects of respiratory care, which include education, supervision, and management;
  2. Health care cost containment or cost management;
  3. Preventative health services and health promotion;
  4. Required abuse reporting; or
  5. Other subject matter which is directed by legislation or rule to be included in continuing education for licensed healing arts practitioners.
- C.** The faculty shall be knowledgeable in the subject matter as evidenced by:
1. A degree from an accredited college or university and verifiable experience in the subject matter, or
  2. Teaching and clinical experience in the same or similar subject matter.
- D.** Application for approval of a continuing education program at a minimum shall include:
1. A listing of education objectives;
  2. A description of the teaching methods, for example: lecture, seminar, audio visual, or simulation;
  3. An interactive format;
  4. Course organizers shall maintain a record of attendance of participants for 3 years;
  5. All course providers shall provide documentation to each course participant that includes: participant name, respiratory care practitioner license number, course title, number of hours of continuing education, date or dates, and name and address of course provider.

**R4-45-212. Audit and Sanctions for Noncompliance**

- A.** The Board shall audit a random sample of respiratory care practitioners for compliance with the continuing education requirements. If documentation of the continuing education requirement is incomplete, the respiratory care practitioner shall correct the deficiency. If the documentation proving the adequacy is not provided within 60 days of the expiration date, the license shall be revoked and the renewal fee forfeited. The Board may audit all late renewals for compliance with continuing education requirements.
- B.** Licensees shall make documentation supporting compliance with continuing education requirements available to the Board upon request during the 2-year period following license renewal.

**R4-45-213. Waiver of Requirements**

At the time of making application for renewal of a license, a respiratory care practitioner may request a waiver from completion of the continuing education requirements. The Board shall grant a waiver only if the respiratory care practitioner verifies in writing that, during the period immediately prior to the expiration of the license, he or she:

1. Has been residing in another country for at least 1 year, reasonably preventing completion of continuing education requirements; or

2. Has been absent from Arizona for at least 1 year because of military or missionary service reasonably preventing completion of the continuing education requirements; or
3. Has been prevented from completing the continuing education requirements for reasons of health or other good cause which includes:
  - a. Total physical or mental disability or the respiratory care practitioner for at least 1 year; or
  - b. Total physical or mental disability of an immediate family member for at least 1 year where the respiratory care practitioner has total responsibility for the family member and the disability reasonably prevents a licensee from obtaining the required units. Verification of the disability claimed under this Section shall be made by a licensed physician or surgeon.

**R4-45-214. Temporary Licensure**

- A.** The Board shall issue a temporary license, valid for 8 months, to all individuals only after the information on the application has been verified for excepted status by Board staff for any who apply for licensure and perform respiratory care services under direct supervision, as described in R4-45-303, of a licensed respiratory care practitioner or a physician pursuant to A.R.S. Title 32, Chapter 13 or 17. The temporary license may be renewed for an additional 120 days after the initial 8-month period upon review and approval of the applicant's request. An individual may receive only 1 8-month temporary license and 1 120-day temporary license renewal.
- B.** A temporary licensee who seeks an extension shall submit a request for a renewed temporary license to the Board on a form prescribed by the Board.
- C.** The request for a renewed temporary license shall:
1. Include an address of record,
  2. Be typed or written in black ink,
  3. Be signed by the applicant,
  4. Be accompanied by the following:
    - a. A temporary license renewal fee in the amount prescribed in R4-45-102(A)(5), and
    - b. A statement under oath of the facts entitling the applicant to receive a renewed temporary license.
- D.** If an applicant does not meet the requirements for licensure or apply for an extension to a temporary license within 60 days prior to the expiration date of the temporary license, the application for licensure shall be administratively closed and the applicant will have to reapply for licensure.
- E.** A temporary licensure is not immune to disciplinary action of the Board pursuant to A.R.S. § 32-3553.

**ARTICLE 3. HEARINGS**

**R4-45-301. Hearing Procedures**

The following procedures are applicable to all hearings conducted pursuant to A.R.S. § 32-3553(I):

1. A Complaint and Notice of Hearing shall be served upon all parties at least 20 calendar days prior to the date set for hearing.
2. A licensee served with a Complaint and Notice of Hearing shall file an answer within 10 calendar days of service of the Complaint, admitting or denying the allegations of the Complaint.
3. A Complaint and Notice of Hearing may be amended to add new or additional grounds prior to hearing. An amended Complaint and Notice of Hearing shall be served upon all parties at least 20 calendar days prior to the date set for hearing. The licensee shall file an

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amended answer to the amended complaint within 10 calendar days of being served.

4. If a party fails to appear, the hearing may be held in the party's absence.
5. The chairperson of the Board or the designated presiding officer may continue, reschedule, or extend the hearing for good cause or for the performance of acts as required by law or the Board.
6. Hearings conducted by the Board shall be open to the public.
7. The designated presiding officer shall conduct the proceedings and rule on the admissibility of evidence.
8. All hearings shall be mechanically or stenographically recorded. The Board is not required to transcribe such records unless there is an appeal to the superior court. Upon written request and receipt of a reasonable fee (i.e., the cost of the transcript) for transcribing such record, the Board may transcribe the record or allow for its transcription by the person requesting the record.
9. In all cases determined by hearing, the Board shall issue and order in accordance with A.R.S. Title 41, Chapter 6.

**R4-45-302. Rehearing or Review of Decisions**

- A. Except as provided in subsection (G), any party appearing in a contested case before the Board who is aggrieved by a decision rendered may file with the Board, not later than 15 calendar days after service of the decision, a written motion for rehearing or review of the decision specifying the particular grounds thereof.
- B. A motion for rehearing or review under this rule may be amended at any time before it is ruled upon by the Board. A response may be filed within 10 calendar days after service of such motion or amended motion by any party. The Board may require the filing of written briefs addressing the issues raised in the motion and may provide for oral argument.
- C. A rehearing or review of the decision may be granted based on a contention that the decision was either:
  1. Founded on or contained errors of law which shall specifically included errors of construction or application of any relevant rules;

2. Unsupported by any competent evidence as disclosed by the entire record;
3. Materially affected by unlawful procedures;
4. Based on a violation of any constitutional provision; or
5. Arbitrary or capricious.

- D. The Board may affirm or modify the decision or grant a rehearing or review to all or any of the parties and on all or part of the issues for any of the reasons set forth in subsection (C). An order granting a rehearing or review shall specify with particularity the ground or grounds on which the rehearing or review is granted, and the rehearing or review shall cover those matters so specified.
- E. No later than 15 calendar days after a decision is rendered, the Board may, on its own initiative, order a rehearing or review of its decision for any reason for which it might have granted a rehearing or review on motion of a party. After giving the parties or their counsel notice and an opportunity to be heard on the matter, the Board may grant a motion for rehearing or review for a reason not stated in the motion. In either case, the order granting such a rehearing or review must specify the grounds therefor.
- F. When a motion for rehearing or review is based upon affidavits, they shall be served with the motion. An opposing party may serve opposing affidavits within 10 calendar days after such service. This period may be extended by the Board for an additional period not exceeding 20 calendar days by written stipulation of the parties. Reply affidavits may be permitted.
- G. If, in a particular decision, the Board makes specific findings that the immediate effectiveness of the decision is necessary for the immediate preservation of the public health, safety, or welfare, the decision may be issued as a final decision without an opportunity for rehearing or review. An application for judicial review of the decision shall be made within the time limits permitted for applications for judicial review of the Board's final decisions.
- H. For purposes of this Section, the terms "contested case" and "party" shall be defined as provided in A.R.S. § 41-1001.

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**TITLE 17. TRANSPORTATION**

**CHAPTER 4. DEPARTMENT OF TRANSPORTATION  
MOTOR VEHICLE DIVISION**

**PREAMBLE**

1. **Sections affected:**  
R17-4-520  
R17-4-520
- Rulemaking Action:**  
Repeal  
New Section
2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**  
Authorizing statute: A.R.S. § 28-202  
Implementing statutes: A.R.S. §§ 28-413, 28-429, and 28-433
3. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**  
Name: Glenn C. Johnson  
Address: Department of Transportation  
4747 North Seventh Avenue, Third Floor  
Phoenix, Arizona 85013-2401



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**4. An explanation of the rule, including the agency's reasons for initiating the rule:**

**A. Repeal of R17-4-520**

The Division proposes to repeal R17-4-520 since it has been in effect without change since 1987. This rule as currently in effect is not clear, concise, or understandable and fails to address the non-discrimination requirements of the Americans with Disabilities Act which postdates the current regulation.

Further, R17-4-520 fails to address amendments to A.R.S. § 28-413(A)(5) effective in 1992. These amendments require that driver's license applicants who disclose an alcohol or substance abuse condition submit to a substance abuse evaluation administered by a certified substance abuse counselor as defined in A.R.S. § 28-429. As currently in effect, R17-4-520 provides that a medical evaluation can only be administered by a medical doctor or a doctor of osteopathy licensed to practice in Arizona, a contiguous U.S. state, or employed by the Federal Government and practicing in Arizona.

**B. New Section R17-4-520**

The proposed new rule is the product of a cooperative effort between the Department of Transportation, Motor Vehicle Division, and representatives of groups representing segments of the disabled and medical communities. The new Section addresses the non-discrimination requirements of the Americans with Disabilities Act and amendments to A.R.S. §§ 28-413(A)(5) and 28-429.

The proposed rule redefines physician to include any medical doctor or doctor of osteopathy licensed to practice in the United States. This will have the effect of easing regulatory burden on many members of the effected public, particularly part-time residents or winter visitors who often have long-standing relationships with competent physicians in other states. Communication between state licensing agencies is currently so sophisticated that it is very easy to verify the credentials of medical practitioners throughout the country.

The proposed new rule provides for and sets forth a "screening questionnaire" to be completed by every applicant for an original Arizona driver's license or renewal license. The screening questionnaire requires that every applicant disclose any physical, psychological, or substance abuse condition that may impair the applicant's ability to safely operate a motor vehicle.

The Americans with Disabilities Act prohibits discrimination against qualified persons as defined in that Act and particularly prohibits discrimination against persons who appear to have disabilities simply on the basis of appearance or stereotype.

As proposed, R17-4-520 sets forth criteria for compliance with the Americans with Disabilities Act. While every applicant for an original Arizona driver's license is required to submit to road, written, and vision testing, an applicant for a renewal license will only be required to submit to a road test, a written test, or a medical evaluation when the applicant discloses a new condition, or a change in an existing condition that may affect the ability to safely operate a motor vehicle. A test would also be required when evidence of symptoms such as incoherence or disorientation is submitted to Department personnel or departmental personnel observe incoherence or disorientation. The proposed rule is intended to prevent renewal applicants from being subjected to additional road and written testing at the discretion of Division personnel merely because of the appearance of a disability.

The proposed new Section R17-4-520 also sets limitations on the requirement that a medical evaluation be submitted in order to be licensed and prescribes the procedures for the assessment of medical evaluations.

The proposed new Section also clarifies the right to challenge adverse medical licensing decisions through the administrative hearing process.

Additionally, proposed new Section R17-4-520 prescribes that when adaptive equipment or vehicle modifications are necessary in order to safely operate a motor vehicle, the restriction be noted on the licensee's license and driving record.

R17-4-520 as proposed has incorporated by reference Departmental policies setting forth the criteria for passing the road and written tests. This is included in the proposed new rule in order to clarify the testing standards for all persons including those qualified persons as defined in the Americans with Disabilities Act.

**5. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable.

**6. The preliminary summary of the economic, small business, and consumer impact:**

It is not believed that the proposed new rule will have a significant general impact on either consumers or small businesses. It is anticipated, however, that there will be an impact on those qualified persons with disabilities affected by this rule who require special vehicle modifications in order to safely operate a motor vehicle. It is also anticipated that those persons who require evaluations from physicians and Substance Abuse Counselors will incur costs for those reports.

There are also costs that will be incurred by Substance Abuse Counselors in order to obtain the necessary certifications in order to submit evaluations pursuant to this rule.

A breakdown of estimated costs is set forth below:

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A. Estimated vehicle modifications/special equipment costs:

<u>Equipment</u>	<u>Costs</u>
Steering Devices	\$55
Complete Hand Controls (manual)	\$400 to \$3,200 (power assist)
Left Foot Accelerator	\$400
Full Foot Controls	\$400 to \$3,200
Right Side Directional	\$400 (remote)
Chest/Shoulder Restraints	Manufacturer Cost
Six-way Power Seat	\$1,350
Hand Dimmer Switch	\$55
Parking Brake Extension	\$375
Pedal Extensions	\$55
Wide Angle Mirrors	Manufacturer Cost
Modified Seat	\$300
Other-Lowered Floor Wheelchair - accessible Minivans	\$9,000 to \$13,000

- B. Substance Abuse Counselors are required to pay the following certification fees: \$200 application fee; \$115 testing fee; and \$200 recertification fee every 2 years. These fees are payable to the Board of Behavioral Health.
- C. The average costs for a Substance Abuse Evaluation is approximately \$80. This is a cost that will be incurred by the examinee required to submit the evaluation and will be an increase in revenue to the Substance Abuse Counselor. The increase in revenue for each Substance Abuse Counselor will be a function of the number of Substance Abuse Evaluations performed.
- D. There is possible economic benefit resulting from decreased insurance carrier liability exposure by identifying and denying licenses to those persons with an alcoholic or a drug-dependent condition. This may result in a small general decrease in automobile liability insurance premiums.

7. **The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name: Glenn C. Johnson  
Address: Department of Transportation  
4747 North Seventh Avenue, Third Floor  
Phoenix, Arizona 85013-2401  
Telephone: (602) 255-7737  
Fax: (602) 241-1624

8. **The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**

Date: June 5, 1996  
Time: 10 a.m. until noon  
Location: ADOT Auditorium  
206 South 17th Avenue  
Phoenix, Arizona  
  
Date: June 6, 1996  
Time: 10 a.m. until noon  
Location: Arizona State Building  
3565 South Broadmont, Conference Room  
Tucson, Arizona



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Date: June 7, 1996

Time: 11 a.m. until 1 p.m.

Location: City Hall/Council Chambers  
211 West Aspen  
Flagstaff, Arizona

Nature: A public hearing for the taking of oral or written testimony regarding the proposed rules.

The Division will accept written comment on the proposed amended rule as set forth herein until 5 p.m., June 14, 1996.

9. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:  
None.

10. Incorporations by reference and their location in the rules:

Motor Vehicle Division Policy No. DL300.20 Written Test Scoring Standards dated June 16, 1993.

Motor Vehicle Division Policy No. DL600.25 Scoring the Road Test and Restrictions dated June 17, 1993.

11. The full text of the rules follows:

**TITLE 17. TRANSPORTATION**

**CHAPTER 4. DEPARTMENT OF TRANSPORTATION**  
**MOTOR VEHICLE DIVISION**

**ARTICLE 5. DRIVER LICENSES**

**Section**

R17-4-520: General Provisions

R17-4-520: General Provisions for Visual, Physical, or Psychological Ability to Operate a Motor Vehicle Safely

**ARTICLE 5. DRIVER LICENSES**

**R17-4-520: General Provisions**

**A. Definitions**

1. "Applicant" means any person who applies for a driver's license or driver's license renewal or is required to complete a re-examination.
2. "Application" means the forms provided by the Motor Vehicle Division prior to the issuance or renewal of a driver's license.
3. "Department" means the Motor Vehicle Division of the Department of Transportation.
4. "Director" means the Director of the Motor Vehicle Division, or his designee.
5. "License" means any driver's license or permit the Department is authorized to issue to operate a motor vehicle.
6. "Licensee" means a person who has a current license issued by the Department.
7. "Licensing action" means any action by the Department involving the issuance, denial, suspension, revocation, cancellation, restriction, or re-examination of a license under this Article.
8. "Medical condition" means any condition in these rules which could affect a person's functional ability to safely operate a motor vehicle.
9. "Medical examination" means an evaluation of a person's physical or mental status performed by a physician in accordance with the rules under this Article, in order to determine a person's functional ability to operate a motor vehicle with the results reported on a form prescribed by the Department.
10. "Medical questionnaire" means a series of questions designed to indicate the existence of a medical condition.

11. "Medical screening question" means a question designed to describe the medical condition(s) identified in the medical questionnaire.

12. "Medical specialist" means a physician certified by a recognized medical specialty board and approved by the Department.

13. "Physician" means a medical doctor or doctor of osteopathy licensed to practice in Arizona, a contiguous U.S. state, or employed by the federal government and practicing in Arizona.

**B. Failure to meet licensing standards.** No person shall be licensed or allowed to maintain a driver's license who fails to meet the medical licensing standards.

**C. Medical screening process:**

1. The license application shall include a medical questionnaire. If the applicant indicates a medical condition or if the Department personnel observes an apparent medical condition, the applicant or licensee will be required to complete the medical screening question.
2. If the person's response to the medical screening question indicates the likelihood that a medical condition exists, the person must submit to a medical examination within 30 days from the Department mailing date.
3. The Department may require an additional medical examination performed by a medical specialist, if the initial medical examination reported to the Department is insufficient to establish that the applicant or licensee possesses the functional ability to safely operate a motor vehicle based on the medical licensing standards in this Article.
4. The applicant or licensee may be required by the Department to appear for an interview to clarify information disclosed by the medical examination.
5. The Department shall be held liable for any expenses incurred by an applicant or licensee in the process of meeting the medical licensing standards.

**D. Reporting requirements:**

1. Failure to complete the medical screening question at the time of application will result in an order to submit to a medical examination within 30 days from the date of the order.

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2. Failure to submit to the medical examination and submit the required report to the Department as required within the time frame shall result in a suspension of the driver's license or denial of issuance until compliance is met.
3. If a person experiences any medical condition after being licensed, he is required to report this condition to the Department within five days of occurrence, or as soon as the medical condition allows.

**E. Hearings and appeals.**

1. All cases where licensing actions have been taken, the licensee or applicant may request a hearing with the executive hearing section within 15 days from the date of the licensing action.
2. All hearing procedures are defined in administrative rule R17-4-901 and R17-4-902.

**R17-4-520. General Provisions for Visual, Physical, or Psychological Ability to Operate a Motor Vehicle Safely**

**A. Definitions.**

1. "Adaptation" means a modification or addition to the standard operating controls or equipment of a motor vehicle.
2. "Arizona Driver's License Manual" or "manual" means the reference booklet issued by the Department of Transportation containing the Arizona Rules of the Road and Arizona traffic laws and rules.
3. "Certified substance abuse counselor" has the same meaning as set forth in A.R.S. § 28-429.
4. "Director" means the Assistant Director of the Motor Vehicle Division or the Director's designee.
5. "Disqualifying medical condition" means a physical or psychological condition, including substance abuse which, because of the continuing, sudden, or unpredictable onset of its symptoms, may impair functional ability.
6. "Division" means the Motor Vehicle Division of the Department of Transportation.
7. "Driver's license" has the same meaning as set forth in A.R.S. § 28-101(21).
8. "Evaluation" means an assessment of an individual's physical or psychological condition performed by a physician to determine whether the individual has a disqualifying medical condition.
9. "Examination" means the process by the Division of observing, testing, and evaluating an examinee's:
  - a. Ability to read and understand official traffic control devices.
  - b. Knowledge of safe driving practices and the traffic laws of this state, and
  - c. Functional ability.
10. "Examinee" means an individual who applies for a driver's license or who is required to complete an examination.
11. "Functional ability" means competence to operate safely a motor vehicle of the type permitted by the classification of or endorsement to an individual's driver's license.
12. "Licensee" means an individual to whom Arizona has issued a driver's license.
13. "Physician" means an individual licensed to practice medicine or osteopathy in the United States.
14. "Screening questionnaire" means the standardized instructions, questions, and certifications administered by the Division to all examinees and to licensees who renew a valid driver's license.
15. "Specialist" means a physician who is a surgeon or a psychiatrist or whose practice is limited to a particular anatomical or physiological area of the human body or to patients within a specific age range, or a psychologist.

**16. "Substance abuse" means:**

- a. The use of alcohol by an individual so that the individual is considered an alcoholic as defined in A.R.S. § 36-2021(1), or
- b. The use of 1 or more controlled substances as defined in A.R.S. § 36-2501(3).

**17. "Substance abuse evaluation" means an assessment by a certified substance abuse counselor to determine whether substance abuse exists.**

**18. "Successful completion of an examination" means that an examinee or licensee has met the minimum criteria set forth in Motor Vehicle Division Policy No. DL600.25, Scoring the Road Test and Restrictions, dated June 17, 1993, and Motor Vehicle Division Policy No. DL300.20, Written Test Scoring Standards, dated June 16, 1993, both of which are incorporated by reference, and on file at the Office of the Secretary of State and do not include any later amendments or additions.**

**B. Screening Questionnaire: The Division shall obtain information about the physical and psychological condition of an examinee or a licensee who is renewing a valid driver's license by requiring all examinees and licensees renewing a valid driver's license to answer the following questions.**

**1. Instructions:**

- a. Under Arizona law, the Motor Vehicle Division of the Department of Transportation is charged with ensuring that the individuals it licenses to operate a motor vehicle can do so safely and do not pose a threat to the lives of others.
- b. Some applicants for a driver's license may have a physical or psychological condition that could make it dangerous for them to operate a motor vehicle on public streets or highways. If you have or think you may have a condition of this nature, you must report the condition to the Motor Vehicle Division now so an evaluation can be made of the condition as it pertains to the safe operation of a motor vehicle. Conditions that you should report are those which, without giving you adequate time to respond safely while you are driving, could cause you to lose control of your vehicle or cause injury to others. If you have experienced during the last 6 months a sudden or unexpected episode of dizziness, weakness, confusion, loss of consciousness, visual impairment, or other similar symptom, regardless of the cause, answer "yes" to the applicable questions below.
- c. If the standard operating controls of the motor vehicle require an adaptation for you to operate the motor vehicle safely, you must report your need for an adaptation to the Motor Vehicle Division so that your driver's license and driving record will reflect the required adaptation.
- d. Your answers to the questions below could save the lives of those who depend on your safe driving decisions.

**2. Answer the following questions:**

- a. If you use alcohol or drugs, are you able to control your use of alcohol or drugs so that the use does not affect your ability to operate a motor vehicle safely?  
**Yes   No   Do Not Use**
- b. Do you have or think you may have a physical or psychological condition that may affect your ability to operate a motor vehicle safely? **Yes   No**
- c. Do you require an adaptation to the standard operating controls of a motor vehicle for you to operate the motor vehicle safely? **Yes   No**

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Answer the following questions if you are applying to renew your driver's license:

- d. Have you maintained your safe driving skills since your last renewal? Yes No
- e. Since the date on which your driving skills were last tested, do you have a new or significantly changed visual impairment or physical or psychological condition (other than glasses or contact lenses) that may affect your ability to operate a motor vehicle safely? Yes No

3. Certification:

- a. I have truthfully answered all questions on this application to the best of my knowledge.
  - b. I understand that making a false statement on this application is a crime and may be punishable under 1 or more of the following statutes: A.R.S. §§ 28-471(5), 28-472, 13-2407, and 39-161.
  - c. I understand the information in the Arizona Driver License manual and I agree to abide by the "Arizona Rules of the Road" and all applicable laws and rules.
  - d. I understand that I am required to report in writing to the Motor Vehicle Division any physical or psychological condition that may affect my ability to operate a motor vehicle safely.
  - e. I affirm that I am physically and psychologically able to operate a motor vehicle safely with the designated alternation, if any.
  - f. I understand that I must notify the Motor Vehicle Division in writing or by telephone within 10 days of any address or name change.
- Signature of Examinee or Licensee  
(Must be your normal signature)  
Witnessed this date MVD Agent

C. Screening process for the safe operation of a motor vehicle.

- 1. To obtain a driver's license or to renew a valid driver's license, an individual shall appear at an office of the Motor Vehicle Division and shall:
  - a. Submit to a vision screening to determine whether the individual meets the standards contained in R17-4-521.
  - b. Complete a driver's license application, and
  - c. Complete a screening questionnaire.
- 2. The Division shall require an examinee who does not have a valid driver's license to obtain an evaluation if the examinee's responses to the screening questionnaire indicate that the examinee may have a disqualifying medical condition, or when an item in subsections (D)(1)(a), (c), or (d) is present.
- 3. The Division shall require a licensee to complete an examination successfully if the licensee's responses to the screening questionnaire indicate that since the licensee's last license renewal, the licensee may have a new physical or psychological condition or a change in an existing physical or psychological condition that may impair the licensee's functional ability.
- 4. The Division shall require a licensee to obtain an evaluation when an item in subsection (D)(1) is present.
- 5. A licensee shall notify the Division either in writing or by telephone as soon as the licensee's medical condition allows if the licensee experiences or has reason to believe the licensee may have a disqualifying medical condition that was not reported when the licensee's current driver's license was obtained, or a change occurs in a physical or psychological condition that the licensee has reason to believe may affect the licensee's functional ability. The

Division shall require the licensee to complete a new screening questionnaire.

D. Evaluation.

- 1. The Division shall require an evaluation only when the Director finds in writing that 1 or more of the following provisions apply:
  - a. The examinee or licensee fails to demonstrate compliance with 1 or more of the standards prescribed in R17-4-521 and R17-4-522.
  - b. The licensee does not successfully complete an examination after reporting a possible disqualifying medical condition and completing a screening questionnaire prescribed in subsection (C)(5).
  - c. The examinee or licensee exhibits unexplained confusion, loss of consciousness, or incoherence that is observed by Division personnel.
  - d. The Division receives written information from an individual having direct knowledge of specific events or conduct that may indicate the examinee or licensee has a disqualifying medical condition.
- 2. The physician or certified substance abuse counselor who performs the evaluation shall report the results on a form prescribed by the Division to the Motor Vehicle Division, Medical Review Program.
- 3. If an evaluation is inconclusive regarding whether the examinee or licensee has a disqualifying medical condition, the Division shall require the examinee or licensee to appear for an interview to clarify information disclosed by the evaluation.
- 4. The Division shall require an additional evaluation performed by a specialist if both the initial evaluation and the interview with the examinee or licensee are inconclusive regarding whether the examinee or licensee has a disqualifying medical condition.

E. Results of evaluation.

- 1. If the results of an evaluation indicate that the examinee or licensee has a disqualifying medical condition, or if the examinee or licensee fails to complete an examination or evaluation required by the Division, the examinee's application for a driver's license shall be denied, or the licensee's driver's license shall be summarily suspended in accordance with the provisions of A.R.S. § 41-1064(C). The summary suspension shall become final 15 days from service of the notice of summary suspension unless a hearing is requested in accordance with subsection (G). Suspensions that become final are subject to the reapplication provisions of A.R.S. § 28-448(G).
- 2. If the results of an evaluation indicate that the examinee or licensee does not have a disqualifying medical condition, the Division shall issue a driver's license to the examinee or shall affirm the validity of the licensee's driver's license by removing the medical suspension or revocation from the licensee's record.

F. Failure to report results of an evaluation.

- 1. The results of an evaluation shall be submitted in writing by or on behalf of the examinee or licensee to the Division within 30 days of the date that the Division requested that the evaluation be obtained.
- 2. If the results of an evaluation requested by the Division are not submitted to the Division in accordance with subsection (F)(1), the Division shall suspend, in accordance with the provisions of A.R.S. § 41-1064(C) or revoke, in accordance with the provisions of A.R.S. § 28-446(A)(5), the driver's license of the licensee, or shall deny the examinee's application for a driver's license.

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G. Driver's license restrictions. If an examinee or licensee requires an adaptation such as the following to demonstrate functional ability, the Division shall note the restriction on the examinee's or licensee's driver's license and driving record.

1. Automatic transmission.
2. Hand dimmer switch.
3. Left-foot gas pedal.
4. Parking-brake extension.
5. Power steering.
6. Power brakes.
7. Six-way power seat.
8. Right-side directional signal.
9. Steering wheel spinner device.
10. Full foot controls.
11. Dual outside mirrors.
12. Chest/shoulder restraints.

13. Pedal extensions.
14. Full hand controls.
15. Adapted seat, and
16. Other.

H. Hearings and appeals.

1. If a licensing action taken pursuant to this Section or R17-4-521 or R17-4-522 is adverse to the examinee or licensee, the examinee or licensee may request a hearing with the Division's executive hearing office within 15 days of the date of service of the notice of the licensing action.
2. All hearings shall be conducted as prescribed by R17-4-901 through R17-4-912.
3. The administrative hearing officer shall sustain, modify, or void the Division's licensing action.

NOTICE OF PROPOSED RULEMAKING

TITLE 19. ALCOHOL, HORSE AND DOG RACING, LOTTERY, AND GAMING

CHAPTER 2. ARIZONA RACING COMMISSION

PREAMBLE

1. Sections Affected

R19-2-309

Rulemaking Action

Amend

2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. § 5-104(A)(2)

Implementing statute: A.R.S. § 5-107.01(B)

3. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: William J. Walsh  
Address: Department of Racing  
15 South 15th Avenue, Suite 100  
Phoenix, Arizona 85007  
Telephone: (602) 542-5151  
Fax: (602) 542-5177

4. An explanation of the rule, including the agency's reasons for initiating the rule:

The amendment strikes the position of announcer from the list of track officials. The rule change was initiated at the request of some of the state's racetracks. The Department does not believe that the announcers at the racetracks need be included as track officials although the individuals filling those positions will still be licensed by the Department as are all other track employees.

5. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

None.

6. The preliminary summary of the economic, small business, and consumer impact:

None.

7. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: William J. Walsh  
Address: Department of Racing  
15 South 15th Avenue, Suite 100  
Phoenix, Arizona 85007  
Telephone: (602) 542-5151  
Fax: (602) 542-5177

**Notices of Proposed Rulemaking**

8. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

No oral proceedings are scheduled. Contact the person listed above in writing to request 1. At least 5 requests need to be submitted within the 30 days following publication of the proposed rulemaking in order to schedule an oral proceeding.

9. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:  
None

10. Incorporations by reference and their location in the rules:  
None

11. The full text of the rules follows:

**TITLE 19. ALCOHOL, HORSE AND DOG RACING, LOTTERY, AND GAMING**

**CHAPTER 2. ARIZONA RACING COMMISSION**

**ARTICLE 3. GREYHOUND RACING**

Section  
R19-2-309. Officials

**ARTICLE 3. GREYHOUND RACING**

**R19-2-309. Officials**

**A. Generally:**

1. The term "track official" shall apply to the following persons employed by the permittee and approved and licensed by the Department: director of racing, 1 steward, mutuel manager, clerk of scales, starter, timer, paddock judge, veterinarian, track superintendent, racing secretary, chart writer, kennel master, and operator of the mechanical lure, ~~and announcer~~.
2. No change.
3. No change.
4. No change.
5. No change.
  - a. No change.
  - b. No change.
  - c. No change.
6. No change.
7. No change.

**B. No change.**

1. No change.
2. No change.
3. No change.
4. No change.

**C. No change.**

**D. No change.**

1. No change.
2. No change.
3. No change.

**E. No change.**

1. No change.
  - a. No change.
  - b. No change.
  - c. No change.
2. No change.
3. No change.
  - a. No change.
  - b. No change.
  - c. No change.
  - d. No change.
  - e. No change.
  - f. No change.
  - g. No change.
  - h. No change.

i. No change.

4. No change.

5. No change.

a. No change.

b. No change.

i. No change.

ii. No change.

c. No change.

6. No change.

a. No change.

b. No change.

c. No change.

d. No change.

e. No change.

f. No change.

g. No change.

h. No change.

i. No change.

j. No change.

k. No change.

7. No change.

**F. No change.**

1. No change.

a. No change.

b. No change.

2. No change.

3. No change.

4. No change.

5. No change.

a. No change.

b. No change.

6. No change.

7. No change.

**G. No change.**

**H. No change.**

1. No change.

a. No change.

b. No change.

c. No change.

**I. No change.**

1. No change.

a. No change.

b. No change.

c. No change.

d. No change.

2. No change.

3. No change.

4. No change.

**J. No change.**

1. No change.

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- a. No change.
- b. No change.
- c. No change.
- 2. No change.
- 3. No change.
- 4. No change.
- 5. No change.
- 6. No change.
- 7. No change.
- 8. No change.
- 9. No change.
- K. No change.
  - 1. No change.
  - 2. No change.
- L. No change.
  - 1. No change.
  - 2. No change.
  - 3. No change.
  - 4. No change.
- M. No change.
  - 1. No change.
  - 2. No change.
  - 3. No change.
  - 4. No change.
  - 5. No change.
  - 6. No change.
  - 7. No change.
  - 8. No change.
    - a. No change.
      - i. No change.
      - ii. No change.
      - iii. No change.
      - iv. No change.
    - b. No change.
    - c. No change.
    - d. No change.
    - e. No change.
    - f. No change.

**NOTICE OF PROPOSED RULEMAKING**

**TITLE 20. COMMERCE, BANKING, AND INSURANCE**

**CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA**

**PREAMBLE**

1. **Sections affected:** R20-5-507  
**Rulemaking Action:** Amend
2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**  
Authorizing statute: A.R.S. § 23-491(04)  
Implementing statute: A.R.S. § 23-491(06)
3. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**  
Name: Cathy Neville, Assistant Director  
Division of Occupational Safety and Health  
  
Address: Industrial Commission of Arizona  
800 West Washington Street, Suite 203  
Phoenix, Arizona 85007  
  
Telephone: (602) 542-1695  
Fax: (602) 542-1614
4. **An explanation of the rule, including the agency's reasons for initiating the rule:**  
The proposed rule will bring the state's rules for elevators and escalators into conformance with the technological advances currently being utilized by the industry. Because the national elevator and escalator manufacturers are currently producing elevators and escalators to meet the new ASME A17.1-1993 Safety Code for Elevators and Escalators, the Industrial Commission finds it necessary to update its rules to ensure that, once installed, these newer elevators and escalators will operate in accordance with the Code which they were designed, manufactured, and installed to meet. Existing elevator and escalator installations are required to continue to meet the Code requirements that were in effect at the time of installation.
5. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**  
Not applicable.
6. **The preliminary summary of the economic, small business, and consumer impact:**  
By adopting and enforcing the ASME A17.1 Safety Code for Elevators and Escalators, the Industrial Commission will require that elevators, escalators, and related equipment operate in the safe and beneficial manner for which they were designed, manufactured, and installed. While there will be an initial period of instruction regarding the changes of this rule, these costs are expected to be minimal.

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**7. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name: Cathy Neville, Assistant Director  
Division of Occupational Safety and Health

Address: Industrial Commission of Arizona  
800 West Washington Street, Suite 203  
Phoenix, Arizona 85007

Telephone: (602) 542-1695

Fax: (602) 542-1614

**8. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**

Date: June 17, 1996

Time: 9:30 a.m.

Location: Industrial Commission of Arizona  
Third Floor Conference Room  
800 West Washington Street  
Phoenix, Arizona 85007

Nature: A public hearing for the taking of oral or written testimony regarding the proposed rules.

Written comments may be submitted on or before 9:30 a.m., June 17, 1996.

**9. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

Not applicable.

**10. Incorporations by reference and their location in the rules:**

*ASME A17.1-1993 Safety Code for Elevators and Escalators*, The American Society of Mechanical Engineers, United Engineering Center, 345 East 47th Street, New York, New York 10017.

This incorporation by reference is found in R20-5-507.

**11. The full text of the rules follows:**

**TITLE 20. COMMERCE, BANKING, AND INSURANCE**

**CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA**

**ARTICLE 5. ELEVATOR SAFETY ADMINISTRATIVE  
REGULATIONS**

R20-5-507. Safety Code for Elevators, Escalators, Dumbwaiters, Moving Walks, Materials Lifts, and Dumbwaiters with Automatic Transfer Devices, Wheelchair Lifts, and Stairway Chairlifts

**ARTICLE 5. ELEVATOR SAFETY ADMINISTRATIVE  
REGULATIONS**

R20-5-507. Safety Code for Elevators, Escalators, Dumbwaiters, Moving Walks, Materials Lifts, and Dumbwaiters with Automatic Transfer Devices, Wheelchair Lifts, and Stairway Chairlifts

A. Every owner or operator pursuant to A.R.S. § 23-491.02 shall comply with the ~~ASME/ANSI A.17.1-1990~~ ASME A17.1-

1993 Safety Code for Elevators and Escalators, incorporated herein by reference and on file with the Office of the Secretary of State. A copy of this referenced material is also available for review at the Industrial Commission of Arizona and may be obtained from the American Society of Mechanical Engineers. This incorporation by reference does not include amendments or editions to ASME A.17.1 published after December 31, 1993.

B. No change.